

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SOUSY BERKHO,

Plaintiff,

Case No. 18-11422

Honorable Victoria A. Roberts

v.

UNITED STATE OF AMERICA,

Defendant.

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ORDER GRANTING MOTION TO DISMISS [ECF No. 4]
AND DISMISSING THE COMPLAINT WITHOUT PREJUDICE

Plaintiff filed this case against the United States of America under the Federal Tort Claims Act ("FTCA"). The United States moves to dismiss the complaint without prejudice because Plaintiff failed to exhaust her administrative remedies before filing suit. [ECF No. 4]. Plaintiff did not respond to the motion to dismiss, and the date her response was due, June 6, 2018, has passed.

Before bringing an action under the FTCA, a party must submit her claim to the appropriate federal agency, and her claim must be "finally denied" by the agency. See 28 U.S.C. § 2675(a); *Allen v. United States*, 517 F.2d 1328, 1329 (6th Cir. 1975) ("28 U.S.C. § 2675(a) deprives the federal courts of jurisdiction over any such cause of action unless the claim has been properly presented to the appropriate federal agency and denied by that agency.").

The United States says Plaintiff filed an administrative claim but did not wait until that claim was denied before filing this suit. Because Plaintiff filed this case before her administrative claim was denied, she failed to satisfy § 2675(a)'s exhaustion

requirement, and the Court lacks subject matter jurisdiction. *See Garzon v. Luttrell*, 24 Fed. Appx. 400, 402 (6th Cir. 2001); *Sherman v. United States*, 48 F. Supp. 3d 1019, 1023 (E.D. Mich. 2014) (“If a plaintiff fails to exhaust his or her administrative remedies before filing a suit, then the court lacks subject matter jurisdiction and cannot proceed; this is true even if the plaintiff fulfills the requirements of exhaustion after filing suit and before the litigation substantially has progressed.”).

Accordingly, the United States’ motion to dismiss [ECF No. 4] is **GRANTED**, and the complaint is **DISMISSED WITHOUT PREJUDICE**.

IT IS ORDERED.

S/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: June 13, 2018